

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MADONNA L. CREAMER and DEPARTMENT OF AGRICULTURE,
AGRICULTURAL RESEARCH CENTER, Beltsville, MD

*Docket No. 98-2034; Submitted on the Record;
Issued March 23, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that her preexisting multiple sclerosis was causally related to compensable factors of her employment.

On September 1, 1996 appellant, then a 38-year-old area property management officer, filed a claim for compensation. She stated that, on October 4, 1993, two of her superiors accused her of going over them to complain to another superior. She claimed that the superiors subsequently harassed her after she denied the accusation. Appellant indicated that, after she changed to a different position in the employing establishment, she had to contend with a subordinate who angrily denounced appellant and her plans at a meeting, walked out of the meeting, refused to carry out her instructions, was not present at his working site when she came to check on him and obstructed her efforts to change the manner in which he accounted for his work and performed his job in handling surplus property. She related that he told her that several of the former holders of her position had been removed and one had returned to work the day after his removal and committed suicide. Appellant noted that she was in fear of her life when, at one time, a rumor circulated that he had "put out a contract" to have her killed. An investigation determined that the rumor began as a joke. Appellant contended that the stress from work aggravated her multiple sclerosis by causing blurring of vision from the right side of each eye and by affecting her larynx.

In a July 16, 1997 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that employment factors occurred in the performance of duty. In an August 8, 1997 letter, appellant requested a hearing before an Office hearing representative, which was conducted on March 20, 1998. In a May 11, 1998 decision, the Office hearing representative found that appellant had established a compensable factor of employment arising from her actions in dealing with an insubordinate subordinate. He further found that appellant's reaction to the rumor that he had hired someone to kill her was a compensable factor of employment. He, concluded, however, that the medical

evidence of record did not establish that the compensable factors of appellant's employment aggravated her multiple sclerosis. He, therefore, affirmed the Office's July 16, 1997 decision.

The Board finds that appellant has not established that her multiple sclerosis was aggravated by compensable factors of her employment.

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition, which will be covered under the Federal Employees' Compensation Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.¹ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.² In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.³

In this case, appellant contended that she was harassed by superiors who accused her of going over their heads to their superior. Appellant, however, has not submitted other evidence to establish that this factor occurred as she alleged. It, therefore, cannot be considered a compensable factor of employment. She also contended that she had to deal with a subordinate who refused to follow her orders, argued with her and obstructed her work. Appellant's assigned duties involved working with the subordinate who refused to work with her. Her interaction with the subordinate would, therefore, be considered a compensable factor of employment. Any factor associated with this interaction, including the rumor that he had hired others to kill her, would be considered compensable factors of employment. Appellant, therefore, has established that she has a compensable factor of employment within the performance of her duty.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984); *Dario G. Gonzalez*, 33 ECAB 119 (1982); *Raymond S. Cordova*, 32 ECAB 1005 (1981); *John Robert Wilson*, 30 ECAB 384 (1979).

³ *Thomas D. McEuen*, 41 ECAB 387 (1990) *reaff'd on recon.*, 42 ECAB 566 (1991).

presence or existence of the disease or condition for which compensation is claimed;⁴ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁵ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁷ must be one of reasonable medical certainty,⁸ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

In an October 29, 1993 report, Dr. William H. Jeffreys, a Board-certified neurologist, commented that appellant was under significant pressure on her job. He indicated that she was having difficulty in reading words and difficulty in moving. Dr. Jeffreys reported that examination showed appellant had bilateral optic atrophy, mild slurring of speech and spastic dystaxic quadriparesis. He diagnosed exacerbation of multiple sclerosis and stated that the stress on appellant's job was obviously causing her multiple sclerosis to exacerbate and progress. Dr. Jeffreys offered no rationale for this statement on causal relationship. His report, therefore, has little probative value.

In an undated report, received by the Office on June 19, 1997, Dr. Robert Taylor, a neurologist, stated that he had been treating appellant since August 20, 1996 for multiple sclerosis. He indicated that her symptoms of multiple sclerosis began in the early 1980's. Dr. Taylor noted that appellant had numbness on the left side of her face and body, bilateral optic atrophy, decreased balance, constant fatigue and right-sided weakness. He related that appellant was under a great deal of stress due to her work situation. He commented that numerous exacerbations and remissions characterized multiple sclerosis. Dr. Taylor indicated that there were a number of known exacerbators, one of which was emotional stress. He stated, "[appellant] is under a great deal of stress, as mentioned above and this can possibly be contributing to the poor response she has had to medications, as well as her current clinical status." This statement is equivocal and speculative. Dr. Taylor did not provide a detailed

⁴ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁵ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

⁶ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁷ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁸ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ See *William E. Enright*, 31 ECAB 426, 430 (1980).

analysis of the physiological mechanism by which emotional stress would aggravate appellant's multiple sclerosis. His report, therefore, has little probative value.

In a May 30, 1996 report, Dr. Robert M. Elfont, a Board-certified neurologist, stated that appellant had problems with eye alignment, significant incoordination, difficulty walking, impaired sensation and a mild degree of weakness in the legs. He described appellant's fatigue, stating that this was her biggest problem. Dr. Elfont stated that appellant had constitutional fatigue, which was more severe in those with multiple sclerosis. He indicated that she also had neurogenic fatigue, which was the inability to maintain a normal neurogenic function with repeated or protracted use. Dr. Elfont related the neurogenic fatigue to appellant's multiple sclerosis. He did not discuss, however, whether appellant's multiple sclerosis was aggravated by work. Dr. Elfont's report, therefore, is irrelevant to this case. The medical reports of this record, therefore, do not establish that appellant's multiple sclerosis was aggravated by compensable factors of her employment.

The decisions of the Office of Workers' Compensation Programs, dated May 11, 1998 and July 16, 1997, are hereby affirmed.

Dated, Washington, D.C.
March 23, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member